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October 3, 2022

VIA CM/ECF

Honorable John L. Sinatra, Jr.
United States District Judge
Western District of New York
Robert H. Jackson United States Courthouse
2 Niagara Square
Buffalo, New York 14202

Re: Gary Metzgar, et al. v. U.A. Plumbers and Steamfitters Local No. 22 Pension Fund, et al.
Case No.: 17-cv-726 ("Metzgar II")

Dear Judge Sinatra:

We represent the defendants in the above-captioned action. In response to your Text Order dated September 29, 2022, the defendants submit the following status report.

Pursuant to United States Magistrate Judge Leslie G. Foschio's August 29, 2017 Decision and Order, *Metzgar II* was stayed pending resolution of *Gary Metzgar, et al. v. U.A. Plumbers and Steamfitters Local No. 22 Pension Fund, et al.* (Case No. 13-cv-85) ("Metzgar I"). In staying *Metzgar II*, Judge Foschio found:

Given that a definitive and prompt determination of the threshold issue presented by Defendants' decision, challenged in *Metzgar I*, to terminate Plaintiffs' early retirement benefits will in all likelihood also completely resolve the new claims presented in *Metzgar II*, the court finds [that] allowing *Metzgar II* to go forward whether or not consolidated with *Metzgar I*, poses the risk that such threshold determination may be significantly delayed. See, August 29, 2017 Decision and Order, p. 11 [*Metzgar II*, Docket No. 13].

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This Court dismissed the Complaint in Metzgar I which challenged the defendant Trustees' December 2011 determination that plaintiffs never retired under applicable law and the terms of the Plan and were not entitled to the early pensions they sought. (Metzgar I, Docket No. 151). The Decision was affirmed by the United States Court of Appeals for the Second Circuit. *See, Metzgar v. U.A. Plumbers and Steamfitters Local No. 22 Pension Fund*, 2022 U.S. App. LEXIS 5466 (2nd Cir. March 2, 2022). Plaintiffs received an extension of time within which to file a petition of writ of certiorari with the United States Supreme Court. The current deadline for plaintiffs to file their petition is October 28, 2022.

In the event plaintiffs' petition is denied, the complaint in Metzgar II should be withdrawn and if not withdrawn should be dismissed. As Judge Foschio found, "adjudication of the merits of the new causes of action" in Metzgar II "will require . . . a threshold judicial decision whether Defendants' terminations of Plaintiffs' early retirement benefits after Defendants determined that Plaintiffs did not in fact properly retire by continuing employment with employers in the construction industry which were also Plan contributors were in compliance with ERISA. If Defendants' December 2011 determination is found to be correct [in Metzgar I], then Plaintiffs' other claims [in Metzgar II] will necessarily also lack merit... ." [See August 29, 2017 Decision and Order, p. 8.]

Thank you for your consideration.

Respectfully submitted,

BLITMAN & KING LLP
Attorneys for Defendants

/s/ Daniel R. Brice

Daniel R. Brice

DRB:jas

cc: Counsel for Plaintiffs
Christen Pierrot, Esq. (via CM/ECF)